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**IN THE
COURT OF APPEALS OF INDIANA**

FREDERICK COBB,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0611-CR-1015

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Jane Magnus Stinson, Judge

The Honorable Jeffrey Marchal, Commissioner

Cause No. 49G06-0606-FB-112593

July 27, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Frederick Cobb (Cobb), appeals his conviction for aggravated battery, as a Class B felony, Ind. Code § 35-42-2-1.5.

We affirm.

ISSUE

Cobb raises one issue on appeal, which we restate as the following two issues:

- (1) Whether the trial court erred in failing to consider his remorse as a mitigating factor in sentencing him; and
- (2) Whether the trial court appropriately sentenced him in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

On June 17, 2006, Cobb stopped to assist stranded motorist, Roosevelt Jackson, Jr. (Roosevelt), and helped push Roosevelt's vehicle to a nearby gas station. As payment for his assistance, Roosevelt offered to pay Cobb \$20. Having only \$10 on his person, Roosevelt told Cobb he would give him an additional \$10 the next day. On more than one occasion over the next few days, Cobb came to Roosevelt's apartment to claim the money. On the last occasion, between 1:00 and 2:00 a.m. on June 20, 2006, Cobb knocked loudly on Roosevelt's door and angrily demanded the money. Roosevelt explained that he could not pay Cobb until he received his paycheck the following day. Cobb replied, "Fuck that, I want my fucking money," and pulled a knife from his waistband. (Transcript p. 48). A struggle ensued between the two and Cobb stabbed Roosevelt in the chest, puncturing his diaphragm, liver, and gall bladder.

On June 21, 2006, the State filed an Information charging Cobb with aggravated battery, a Class B felony, I.C. § 35-42-2-1.5. On September 28, 2006, a jury found Cobb guilty as charged. On October 12, 2006, the trial court sentenced Cobb to fifteen years imprisonment, with seven years suspended and two years probation. Thus, Cobb was ordered to serve eight years in the Department of Correction.

Cobb now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Cobb argues that the trial court inappropriately sentenced him. Specifically, Cobb contends that the trial court failed to consider his remorse as a mitigating factor.

“[S]o long as a sentence is within the statutory range, it is subject to review only for abuse of discretion.” *Anglemyer v. State*, --- N.E.2d ---, 2007 WL 1816813, 6 (Ind. June 26, 2007). An abuse of discretion occurs if a trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). However, “[i]n order to carry out our function of reviewing the trial court’s exercise of discretion in sentencing, we must be told of [its] reasons for imposing the sentence. . . . This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Of course[,] such facts must have support in the record.” *Anglemyer*, 2007 WL 1816813 at 6 (quoting *Page v. State*, 424 N.E.2d 1021, 1023 (Ind. 1981)). Where the trial court has entered a reasonably detailed sentencing statement explaining its reasons for a given sentence that is supported by the record, we may only review the sentence through Appellate Rule 7(B), which provides that we “may

revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we] find that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Anglemyer*, 2007 WL 1816813 at 7.

In the present case, Cobb was convicted of aggravated battery, which is a Class B felony and carries an advisory sentence of ten years, a minimum sentence of six years, and a maximum sentence of twenty years. *See* I.C. §§ 35-42-2-1.5; 35-50-2-5. At the sentencing hearing, the trial court explained its reasons for imposing a sentence of fifteen years, finding as aggravators: (1) Cobb's criminal history, consisting of criminal behavior in Indiana and Arizona; and (2) Cobb was on probation in Indiana when he committed the instant offense. As mitigators, the trial court found: (1) Cobb has a substance abuse problem; (2) incarceration would place undue hardship on Cobb's dependent family members; and (3) "[Cobb] has made attempts to improve his life while on pre-trial detention." (Tr. p. 403). Nevertheless, the trial court announced, "[a]ll told, the aggravators outweigh the mitigators so that imposition of a sentence above the advisory term is warranted." (Tr. p. 403).

Cobb alleges the trial court improperly failed to consider his remorse as a mitigating factor. Our review of the record indicates that Cobb submitted a written apology in the pre-sentence investigation report, and stated at the sentencing hearing that he was "sorry . . . that it happened." (Tr. p. 390). *Anglemyer* instructs us that the reasons given for a sentence, and the omission of reasons arguably supported by the record, are reviewable for an abuse of discretion. *See id.* However, in Cobb's case, despite the fact that there is evidence of remorse in the record, we cannot hold that the trial court abused

its discretion in not recognizing such remorse as a mitigating circumstance. In our view, the trial court possesses the ability to directly observe the defendant, and is therefore in the best position to determine whether a defendant's remorse is genuine. *See Corrales v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). Thus, substantial deference must be given to a trial court's evaluation of remorse. *Id.* Moreover, the relative weight assigned by the trial court to the mitigators it did identify is not subject to our review. *Anglemeyer*, 2007 WL 1816813 at 7. Accordingly, we conclude the trial court entered a reasonably detailed recitation of its reasons for imposing Cobb's sentence and did not abuse its discretion in failing to recognize Cobb's remorse as a mitigating factor.

Additionally, Cobb contends his sentence is inappropriate in light of the nature of the offense and his character. We disagree. Our evaluation of the nature of the crime in this case leads us to conclude that Cobb committed a violent and senseless offense that resulted in serious injury to another human being. Specifically, Cobb, unprovoked, stabbed a man in the chest over an amount of \$10. Further, our review of Cobb's character reveals numerous – nearly two dozen, to be exact – previous run-ins with the law here and in Arizona. We also note that the record indicates Cobb was on probation in Indiana when he committed the instant offense. Consequently, we conclude that the trial court's sentence of fifteen years, which is still five years less than the maximum advisory sentence for a Class B felony, is appropriate in light of the nature of the offense and Cobb's character.

CONCLSUION

Based on the foregoing, we conclude that the trial court appropriately sentenced Cobb in light of the nature of the offense and his character.

Affirmed.

NAJAM, J., and BARNES, J., concur.